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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,533	01/24/2002	Nico N. Raczek	01/017 NUT	2351

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ProPat, L.L.C.
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EXAMINER

HENDRICKS, KEITH D

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,533

Applicant(s)

RACZEK, NICO N.

Examiner

Keith Hendricks

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8 and 10-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of the weight percentage in claims 8 and 10 is indefinite, as it provides no reference point to which this may be compared. In other words, it is unclear to what whole amount the sorbic acid percent is relative. Since the invention of claim 10 is simply sorbic acid and an enzyme, this amount cannot be recited as relative to a feedstuff which is not part of the combination, in order to accurately assess the metes and bounds of the invention. Further, claim 8 appears to recite the percentage amount within the composition (i.e. "combination", as claimed) to be added to the feedstuff, but this is unclear.

- **NOTE:** To maintain clarity of instant claims 1-7, it is strongly suggested that applicants amend these claims to recite that the sorbic acid concentration is by weight relative to the feedstuff.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 1761

1. Claims 8 and 10-11 remain rejected under 35 U.S.C. 102(b) as being anticipated by JP 73-007,060 (English abstract provided).

Applicant's arguments filed September 15, 2004, have been fully considered but they are not persuasive. As stated in the rejection under 35 U.S.C. 112, second paragraph above, the Office is not able to identify an actual amount of sorbic acid within the claimed preparation, and thus the rejection over the reference is maintained for the reasons of record. Regardless, the amounts recited by the reference anticipate the amounts of instant claims 10-11.

2. Claims 8 and 10-11 remain rejected under 35 U.S.C. 102(b) as being anticipated by Deyoe (US PAT 3,988,483).

Applicant's arguments filed September 15, 2004, have been fully considered but they are not persuasive. As stated in the rejection under 35 U.S.C. 112, second paragraph above, the Office is not able to identify an actual amount of sorbic acid within the claimed preparation, and thus the rejection over the reference is maintained for the reasons of record. Regardless, the amounts recited by the reference anticipate the amounts of instant claims 10-11.

3. Claims 8 and 10 remain rejected under 35 U.S.C. 102(e) as being anticipated by Brunner (US PAT 6,350,485).

Applicant's arguments filed September 15, 2004, have been fully considered but they are not persuasive. As stated in the rejection under 35 U.S.C. 112, second paragraph above, the Office is not able to identify an actual amount of sorbic acid within the claimed preparation, and thus the rejection over the reference is maintained for the reasons of record. Regardless, the amounts recited by the reference anticipate the amounts of instant claim 10.

4. Claims 1, 3 and 8-10 remain rejected under 35 U.S.C. 102(b) as being anticipated by McCauley III (US PAT 5,066,498).

Applicant's arguments filed September 15, 2004, have been fully considered but they are not persuasive. At page 10 of the response, applicant states that the reference is "silent as to the amount of supplement to be incorporated into the feedstuff." This is not deemed persuasive for the reasons of record. At column 3, lines 14-16 and 43-49, it is clearly stated that the composition may be incorporated with a traditional animal feed, or "may be fed alone." This makes the composition a "feedstuff", which is

Art Unit: 1761

fed to agricultural livestock. Thus, the reference anticipates the claimed invention. Further, regarding claims 8 and 10-11, as stated in the rejection under 35 U.S.C. 112, second paragraph above, the Office is not able to identify an actual amount of sorbic acid within the claimed preparation, and thus the rejection over the reference is maintained for the reasons of record. Regardless, the amounts recited by the reference anticipate the amounts of instant claim 10.

Applicants also state that while the reference discloses the addition of amylase enzyme, does not teach the "wide variety of active enzymes recited in claim 3." This is not deemed persuasive, however, as the reference need not teach every possibility encompassed by the claims; it need only teach one in order to anticipate the claimed invention. Such has been met by the reference.

5. Claims 8 and 10 remain rejected under 35 U.S.C. 102(b) as being anticipated by Leahy et al.

Applicant's arguments filed September 15, 2004, have been fully considered but they are not persuasive. As stated in the rejection under 35 U.S.C. 112, second paragraph above, the Office is not able to identify an actual amount of sorbic acid within the claimed preparation, and thus the rejection over the reference is maintained for the reasons of record. Regardless, the amounts recited by the reference anticipate the amounts of instant claim 10.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deyoe et al.

The previous rejection of claim 2 under this statute is incorporated as it now applies to amended claims 1-3. Applicant did not respond to this rejection, and thus it is maintained for the reasons of record, as it applies to instant claims 1-3.

Although a specific amount of sorbic acid used in the feedstuff is not provided in the reference, phosphoric acid is demonstrated as used in amounts of from 1%-3.6% by weight of the preparation (Tables VI-VIII). As stated above, the reference provides for the addition of an acid, and specifically

Art Unit: 1761

recited a set including sorbic acid and phosphoric acid. Given the teaching of the functional equivalency of the acids, it would have been obvious to one of ordinary skill in the art to have utilized any of the acids recited in the list at column 7 in the same approximate amounts relative to the total feedstuff composition as was done with phosphoric acid. Thus, it would have been obvious for one of ordinary skill in the art to have added sorbic acid in an amount of from 1%-3.6% by weight of the feedstuff preparation.

2. Claims 4-7 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Deyoe et al., as applied to claims 1-3 above, in view of Pais et al. (US PAT 4,482,550).

Applicant's arguments filed September 15, 2004, have been fully considered but they are not persuasive. At page 12 of the response, applicant states that Pais et al. ('550 patent) does not teach or suggest the claimed invention, either alone or in combination with the primary reference, in this case, Deyoe et al. Applicant also states that there is no motivation to combine the references.

This is not deemed persuasive for the reasons of record. Initially, it is noted that Pais et al. was cited for its general teaching that known feedstuffs may be administered to a number of different livestock, including chickens, geese, lambs, pigs and cattle. Pais et al. also disclose the fact that such feedstuffs may comprise sorbic acid. Deyoe et al. discloses a feedstuff which is very similar to the invention of claims 1-3, and which provides clear motivation to substitute sorbic acid for phosphoric acid, as stated above and previously on the record. Deyoe et al. already discloses the administration of its feedstuff to cattle.

Thus and again, the utilization of compositions containing both enzymes and sorbic acid, with a typical animal feed composition, was suggested by the primary reference itself. In light of the teachings of Pais et al., and the common knowledge of the state of the art at the time the invention was made, it would have been obvious for one of ordinary skill in the art to have utilized the feedstuff disclosed and suggested by Deyoe et al., for administration to various livestock such as chickens, geese, lambs, and pigs. This simple practice would not have involved an inventive step for one of ordinary skill in the art, especially knowing that the feed of agricultural livestock often overlap in relative location and consumption.

Art Unit: 1761

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KEITH HENDRICKS
PRIMARY EXAMINER